

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Ricky Lee Howk,

Complainant,

vs.

Independent School District (ISD) 88
New Ulm, and the Editor of *The Journal*,

Respondents.

**ORDER FINDING
NO PRIMA FACIE VIOLATION AND
DISMISSING COMPLAINT**

On August 11, 2014, Ricky Howk filed a complaint with the Office of Administrative Hearings alleging that ISD 88 and the Editor of the New Ulm *Journal* violated Minnesota Statutes § 211B.13 (bribery) in connection with the August 12, 2014, school bond referendum ballot question.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on August 11, 2014, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondents on August 11, 2014.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint fails to set forth *prima facie* violations of Minnesota Statutes § 211B.13.

ORDER

IT IS ORDERED:

That the Complaint filed by Ricky Lee Howk against ISD 88 and the Editor of *The Journal* is **DISMISSED**.

Dated: August 14, 2014

s/LauraSue Schlatter

LAURA SUE SCHLATTER
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.6.

MEMORANDUM

The New Ulm Public Schools (ISD 88) approved the placement of a school bond referendum question on the August 12, 2014, ballot. The ballot question asked District 88 voters whether to authorize the School District to issue school building bonds in an amount not to exceed \$46.9 million.

On August 1, 2014, the local newspaper, *The Journal*, reported that an anonymous couple has pledged to give \$1 million to the School District to supplement the fine art facilities at the new high school if the voters of the district approve the bond referendum. The article appeared on the front page of the paper. *The Journal* also printed an editorial in its August 2, 2014, edition, encouraging voters to join the anonymous couple in supporting the referendum. Two other letters to the editor in support of the referendum were published in the August 3, 2014, edition of *The Journal*.

The Complaint alleges that the School District Superintendent, School Board members, and Kevin Sweeney, the Editor of *The Journal*, violated Minn. Stat. § 211B.13 by publishing information about the anonymous gift and encouraging voters to vote in favor of the school bond referendum. The Complainant asserts that the article and editorials published in *The Journal* represent attempts by the Respondents to “buy votes” and amount to bribery in violation of Minn. Stat. § 211B.13.

Standard of Review

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of Chapter 211A or 211B.¹ For purposes of a *prima facie* determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.² A Complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Chapter 211A or 211B.³

¹ *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. App. 2010).

² *Id.*

³ *Id.*

Governing Statute

Minn. Stat. § 211B.13 provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages of nominal value consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Analysis

Minnesota Statutes § 211B.13 is an anti-bribery statute. It prohibits giving or promising to give something of monetary value to a person in order to induce a voter to vote in a particular way at an election. In this case, an anonymous couple has promised to give one million dollars to the School District if the school bond referendum passes. The Complaint suggests that by promising to make this public donation to the School District, the couple is promising to give something of monetary value to all district residents in order to induce voters to vote for the ballot question.

The Complaint, however, is not against the couple offering to give the donation.⁴ The Complaint is against the School District, which stands to benefit from the gift, and the local newspaper that reported on the gift. There is no allegation in the Complaint that either the School District or the newspaper promised to give money to a person in order to induce voting for the ballot question, and the Complaint fails to allege any facts that would support such a claim. The mere fact that *The Journal* reported on the anonymous couple's offer and published an editorial in support of the referendum is insufficient to support a prima facie violation of Section 211B.13. Likewise, the fact that the School District would benefit from such an offer does not support finding a prima facie violation of the statute.

⁴ Even if the Complaint had named the couple, the School District may not be a "person" within the meaning of the statute. See *Dowling v. Davies*, Order of Dismissal, OAH 8-0325-21723 (December 3, 2010) (presiding administrative law judge refused to expand the meaning of the word "person" in Section 211B.13 to include local governments or municipalities noting that to suggest a whole community would be unlawfully influenced to vote in a particular manner based on a donation to the city was unreasonable); Op. Atty. Gen. 106-e, April 10, 1995 (offer to provide money and land for relocation of courthouse not a violation of section 211B.13), *citing*, Op. Atty. Gen. 627-B-3, May 6, 1954 (gift of land and money for courthouse construction not a violation of Corrupt Practices Act).

Because there are no facts alleged in the Complaint that suggest that the School District or *The Journal* promised to give money or something of monetary value in order to induce voters to vote in favor of the bond referendum, the Complaint fails to allege a prima facie violation of Minn. Stat. § 211B.13 and must be dismissed.

The Complaint is dismissed in its entirety.

L.S.